JPMorgan

June 25, 2007

Mr. Howard G. Borgstrom
Office of the Chief Financial Officer
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: RIN 1901-AB21

Dear Mr. Borgstrom:

J. P. Morgan Securities, Inc. (JPMorgan) presents its views below on the U.S. Department of Energy's (DOE's) Notice of Proposed Rulemaking (NOPR) for the Title 17 loan guaranty program created by the Energy Policy Act of 2005 (Act). Although the proposed regulations provide substantially more detail than the initial guidelines published by DOE last August, a number of uncertainties – particularly around the range of potential credit subsidy costs – remain that make it difficult for JPMorgan to provide a definitive view. Nevertheless, we provide the following comments as an effort to be as constructive as possible.

Financial structure. The statutory requirement giving DOE a first lien priority in the assets of the project makes the program potentially problematic from a lender's perspective. By taking a second lien interest, a lender's participation is tantamount to an equity investment. In the event of a default, lenders face unsecured losses equal to the entire amount of the outstanding balance of the unguaranteed portion of the loan. Lenders, therefore, will likely request the highest possible guaranty percentage from the government or they may decline to participate in the program.

Accordingly, DOE's proposal to increase the federally backed share of loans from a maximum of 80 percent under the guidelines to 90 percent under the NOPR is a welcome change but remains potentially insufficient. Given DOE's goal to balance industry needs with the protection of taxpayer dollars, DOE may want to consider the establishment of a variable pricing mechanism whereby DOE would charge higher fees for projects in need of greater federal participation. Separately, the Department could make the program more attractive to lenders by giving borrowers the flexibility to post additional collateral for the benefit of lenders that is unencumbered by the DOE's first lien provisions.

The proposed prohibition against stripping the guaranteed portion from the remainder of the loan makes little sense from a lender's perspective. Given the long-term tenors expected under this program, it is unclear how lenders would fund the unguaranteed portions. Banks rarely lend for tenors beyond eight to ten years, particularly when all eligible collateral is subordinated. Such a prohibition might significantly limit participation in the program by lenders. If stripping were allowed, banks could use shorter tenors to provide the unguaranteed portions. An expectation that lenders would maintain an unguaranteed position for the life of such loans is most unrealistic.

Project costs. Credit subsidy fees should be included in DOE's definition of project costs. Section 609.2 of the NOPR defines project costs as those expenses incurred by a Borrower "directly related to the design, engineering, and financing... of an Eligible Project." Since projects to be funded under Title 17 would presumably not be financed or would be financed under less favorable terms in the absence of a guaranty, payment of the credit subsidy fee is in fact directly related to the financing of the project and therefore should be included in the definition of project costs. The ability to finance such fees is a common feature of loan guaranty programs across the federal government.

Payment of the credit subsidy cost. The magnitude of the subsidy cost could have a significant impact on a borrower's interest in a loan and a lender's willingness to provide the financing. Given the high degree of uncertainty regarding credit subsidy costs, we recommend the government provide borrowers with an option to withdraw their application upon DOE's notification to the borrower of the subsidy cost to be charged for the loan guaranty. Since the size of that payment could also affect the ability of a borrower to repay any loans granted, we also recommend that lenders also be given an option to withdraw any financing commitments made to the borrower upon notification by the government of the subsidy cost.

Section 1702(b) of the Act states that: "No guarantee shall be made unless an appropriation for the cost has been made; or (2) the Secretary has received from the borrower a payment in full for the cost of the obligation and deposited the payment into the Treasury." DOE has proposed to interpret this statement as prohibiting any share of the costs between appropriations and costs paid by borrowers. We believe the statute could be interpreted more flexibly and suggest DOE interpret such provisions to allow for borrowers to pay a partial share of the costs in the event the Congress appropriates budget authority for this program.

Eligible lenders. Section 609.11 of the NOPR states that DOE expects each lender to diligently perform its duties in the servicing and collection of the loan as well as in ensuring that the collateral package securing the loan remains uncompromised. Given the importance of those requirements, particularly in the event of a loan default and guaranty claim, we recommend DOE provide additional details on acceptable servicing and collateral management practices. Leaving such concepts undefined gives rise to the potential for disputes in the future and increases a lender's exposure to litigation.

Finally, we suggest DOE relax the requirement found in Section 609.4 requiring all pre-applications to be accompanied by committed documentation from a lender. For the first few application periods, we suggest DOE provide flexibility to applicants and lenders to revise their financing agreements as their package moves through the pre-application review process. Such an approach would allow program participants to change certain terms prior to submission of a final application.

We remain concerned that if the Title 17 program is implemented as proposed in the NOPR, it will result in a program that will be either underutilized or unutilized. While the overall approach is quite consistent with OMB Circular A-129, it appears at odds with the regulations and operating procedures used by other federal credit agencies (examples include the inability to finance upfront subsidy costs and the prohibition on stripping). While the draft regulations might be a way to get some projects financed under more favorable terms and conditions than would otherwise occur, it seems

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unlikely that many new projects will be funded unless the regulations are revised to more closely resemble the characteristics of other federal credit programs.

We would welcome the opportunity to discuss our concerns with you. Feel free to contact me at (212) 834-5160 or Doug Criscitello at (202) 533-2128.

Sincerely,

Michael K. Clare
Managing Director